

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 343 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.
2. To be referred to the Reporter or not? NO.
3. Whether Their Lordships wish to see the fair copy of the judgement? NO.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.
5. Whether it is to be circulated to the Civil Judge? NO.

STATE OF GUJARAT

Versus

HAJIBHAI RAJABALI

Appearance:

MR SR Divetia, APP for Petitioner
MR BN KESHWANI for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 18/09/98

ORAL JUDGEMENT

1. The State of Gujarat by filing this appeal under Section 378 of the Code of Criminal Procedure, 1973 (to be referred to as " the Code") has challenged the judgment and order dated 24-1-90, passed by the learned Judicial Magistrate First Class, Mahuva, in Criminal Case No.574/87, whereby the learned Magistrate acquitted the

respondent No.1-original accused of the offence punishable under Section 7 and 16 (1) (c) (d) of the Prevention of Food Adulteration Act (to be referred to as " the Act").

2. As per the prosecution case, the Food Inspector, M.D.Patel, on 28-3-87 at about 9-30 a.m., went to the shop of the respondent No.1, situated at Bhadrod Gate, Mehsana, for collecting the samples of chilly powder. At that time, respondent No.1 was present in the shop and in the shop two plastic bags containing chilly powder was lying there for sale. The Food Inspector had given his identification and told the respondent that he wants to take the sample of chilly powder in the presence of the panchas and started the procedure, at that time, the respondent No.1 threw away the chilly powder on the board of the shop and on the stair case and thereby obstructed in the procedure of the complainant- Food Inspector. Out of the chilly powder which was thrown away by the respondent No.1, the complainant- Food Inspector taken 50 grams of chilly powder and sealed the same in a packet by making a panchnama in the presence of the panchas. The complainant-Food Inspector was accompanied by his peon Jayendrabhai Bachubhai Bhatti and two panchas. Therefore, as the Food Inspector was prevented from collecting sample of chilly powder from the shop of respondent No.1, a complaint was lodged by the Food Inspector, Shri M.D.Patel, against the respondent No.1 in the Court of learned Judicial Magistrate First Class, Mahuva, which is registered as Criminal Case No.574/87.

2. Thereafter, plea of the accused came to be recorded. The prosecution in support of his case examined Food Inspector, Peon-Jayendrabhai Bachubhai Bhatti and two panchas. After recording the evidence of the prosecution, further statement of the respondent No.1 came to be recorded under Section 313 of the Code. The respondent No.1 in his further statement denied the prosecution case that the Food Inspector had come to his shop to collect a sample of chilly powder. The learned Magistrate after hearing the arguments of learned advocates of both the sides, recorded the order of acquittal, which is challenged by State of Gujarat in this appeal.

3. The learned A.P.P. Mr. S.R.Divetia has taken me through the entire evidence on record and submitted that the learned Magistrate erred in not relying the evidence of the complainant-Food Inspector and his peon Jayendrabhai Bachubhai Bhatti. Learned A.P.P. has further submitted that it is proved beyond reasonable

doubt from the evidence of the complainant and his peon that the respondent No.1 had prevented the Food Inspector from collecting the samples of chilly powder and had prevented the Food Inspector from exercising the powers conferred on him by the Act. The submission of the learned A.P.P. is devoid of merit. The learned Magistrate while recording the acquittal order has given cogent and convincing reasons why he did not accept the version of the complainant. Scanning through the evidence of the complainant-Food Inspector, M.D.Patel and the evidence of peon Jayendrabhai Bachubhai Bhatti, it has borne out that evidence of both these persons does not inspire confidence. When the evidence of the complainant is recorded, peon Jayendrabhai Bachubhai Bhatti had remain present in the Court. Even otherwise also there are many contradictions, if the evidence of the complainant and the peon is carefully scrutinized. Therefore, I do not find any illegality or infirmity in the order recorded by the learned Magistrate.

4. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence and the learned Judge who had an advantage of observing demeanour of witnesses. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent No.1. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent No.1-accused and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convincing me to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

6. For the foregoing reasons, the appeal is dismissed.

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(mithabhai)